IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Crim. Application No. 3773 of 2006

The State of Maharashtra ..Applicant

vs.

1. Shri Mahendra Jagdish
Agarwal and others ..Respondents

Shri S.R.Borulkar, P.P with Shri S.S.Pednekar, A.P.P. for applicant.
Shri A.H.H.Ponda with Miss Sangita A.Musale for respondent Nos. 1 and 2
Shri S.V.Marwadi for respondent nos.3 to 6

CORAM: S.C.DHARMADHIARI J.
9th **January,2007**

JUDGMENT:

1. Heard the learned Counsel.

2. This is an application preferred by the State for cancellation of bail granted to the respondents by Special Judge, (Under the MCOC Act,1999) in criminal application no.9 of 2006. The bail was granted by order dated 7th September, 2006.

3. It is not in dispute that the D.C.B.C.I.D. Unit VIII, Mumbai registered C.R.No.53/06 against the accused, respondents before me.

4. The prosecution case is that the first informant is a businessman and social worker residing at Andheri. The prosecution case is briefly set out in para 2 of the present application.

6. It is contended that the statement of the first informant was recorded during the course of the incident at Andheri and Juhu. C.R. was registered alleging offence punishable under sec.387, 506(II) of I.P.C. read with sec.120(B) of I.P.C. and offence punishable under sec.3(i)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999, (MCOCA for short) The accused were arrested on 5th July, 2006. They were produced before the Special Judge and remanded to police custody till 14th July, 2006. On 4th August, 2006 they were remanded to judicial custody.

7. Respondent Nos. 1 to 6 are the original accused nos. 1 to 6. They applied for bail before the Special Judge by filing bail application No.9 of 2006. The bail was granted by the learned Special Judge after hearing both sides and that is how the present application is preferred for cancellation.

8. Shri Borulkar, learned Public Prosecutor submits that the F.I.R. alleges serious offence. The grounds for cancellation of bail are well settled. It is not only that supervening circumstances or the post bail conduct is the only relevant factor. If the order enlarging the accused on bail is wholly perverse, vitiated by total non application of mind and arbitrary then also bail can be cancelled. He submits that there are general observations, sweeping remarks and conclusions drawn at the stage of enlarging the accused on bail. He invites my attention to para 11 of the impugned order and the alleged factual errors therein. He submits that the learned Judge's conclusion at the prima facie stage that Ravi Pujari had not threatened any of the residents or occupants to join a particular proposed Cooperating Housing Society is totally erroneous. Threats have been given in the name of Ravi Pujari is what is observed by the learned Judge. Shri Borulkar was at pains to point out that Ravi Pujari is interested in the Redevelopment project and the applicants are the members of 'organised crime syndicate' headed by him. The learned Judge has observed that the

threats have been given at the instance of the said Ravi Pujari. Shri Borulkar claims that there is enough material to show that an offence under MCOC Act has been committed by the accused. Once such is the nature of the materials collected and when the investigations are still in progress the learned Judge should not have enlarged the accused nos. 1 to 6 on bail. He submits that the learned Special Judge has at the stage of grant of bail elaborately discussed the material and concluded that the accused are not guilty of any offence punishable under MCOC Act. The learned Judge has, according to Shri Borulkar, unnecessarily referred to the submissions of the Special P.P. for State appearing before him. In any event, the learned Judge having taken the case diary and statement recorded into consideration should not have thereafter made any reference to these submissions of the learned Special P.P. and/or to the statement orally made by the investigating officer who was present in the Court. For all these reasons, Shri Borulkar has prayed that the bail be cancelled. In support of his submission Shri Borulkar has relied upon the order dated 13th September, 2006 in Crim.Application No.2973 of 2006.

9. On the other hand Shri Ponda has supported the impugned order. According to Shri Ponda there is no material to show the threats to the complainant. He had referred to the fact that two suits have been filed pertaining to the project of development/redevelopment.

10. Shri Ponda has then contended that the complainant/first informant has not complained about the incident on 1st July, 2006. He has invited my attention to the affidavits filed by the respondents to oppose this application. He has then submitted that the first informant is a disgruntled person and himself being interested in the immovable property has set the criminal law in motion with a malafide intention. Shri Ponda has emphasised that it is immaterial in this case whether any connection is established with one Mangala Desai or Ravi Pujari. The property concerned in question is situate at Borivli and admeasures 8160.04 sq.meters. The prosecution has not collected any material to show that respondent nos. 1 and 2 contacted Ravi Pujari or at their behest Ravi Pujari gave any threats to the complainant or others. There are no witnesses, there is no telephonic

conversation intercepted to that effect. There are not even print outs to show that either respondent nos. 1 or 2 contacted Ravi and/or Ravi Pujari had contacted the complainant. In such circumstances, there is nothing prima facie to connect the respondents to the alleged threats. The respondents have purchased the property and at every stage they have taken the help of police or of the Court.

11. Shri Ponda has stressed the title of the immovable property. Shri Ponda states that the complaint is lodged with a view to grab the property. The complainant belongs to the Nationalist Congress Party.

12. Shri Ponda has also invited my attention to the affidavit of respondent nos. 3 to 6.

13. Shri Ponda has also tendered a synopsis of dates and events and substance of arguments. The details pertaining to the Development are set out therein. He states that the property was acquired by M/s D.V.Industries by conveyance dated 18th December, 1963. Thereafter on 27th January, 2006 M/s Vertex Warehousing and Construction Pvt.Ltd. purchased the land from

M/s D.V.Industries. Shri Ponda has pointed out that some of the respondents are not concerned with the property. Shri Ponda submits that the crucial date is January, 2006. Shri Ponda has taken me through the complaint in detail. He has also taken me through the proceedings in the City Civil Court and the orders passed therein. He submits that the police protection was sought for putting up the board on the property. There is absolutely no material to show that any threats were given to the complainant. There was a table survey carried out at the site. At no point of time any threats were given during the survey. Thus, the conduct of the complainant is not bonafide. Once no resident has complained of any threat by Ravi Pujari then prima facie conclusion drawn by the learned Special Judge is in no way erroneous. Consequently the application deserves to be dismissed.

14. With the assistance of the learned Counsel appearing for both sides, I have perused the first information report. The first information report is lodged at the M.I.D.C.police station alleging offence under sections 387, 120-B, 506(II) of I.P.C. and section 3(i)(ii),

sec.3(2) and 3(4) of MCOC. The complainant's name is not disclosed. However, he appears to be originally belonging to Varanasi district in the State of Uttar Pradesh. He alleges that on Andheri Kurla Road his aunt's hotel "Banarasi Dairy Farm" is located and he is working there. He presently resides at the address mentioned in the statement. He has 4 rooms and 1 shop belonging to him. His income is from the rent and further his case is that he has two motor cars which he gives on hire. He was previously working in her Aunt's hotel. Next to this hotel there was another hotel called "Ameeta Hotel". He states that in the area where he is residing one Vishnu Dutt alias Nepali, Ravi Pujari, Bala Zalte, Padu Naik were chitchatting. The complainant knows all of them. There are other two persons Suresh Bhavangir alias Bhau and Kishor Bhavangir who are also residing in the locality. After narrating the business and other activities carried on by him it is alleged by the complainant that in November-December, 2005, some persons/boys whose names are listed in the F.I.R. were forcibly collecting signatures on the agreement of the proposed housing society. These persons are of notorious nature and they were promoting the housing

society. These persons, according to the complainant, were working at the instance of one Madhu Musale. The agreement was also entered into by him. Madhu Musale is the owner of Monarch Builders and one Mahendra Agarwal is his partner. His office is situated at Marol and the complainant knows Madhu Musale from 1996. According to him, all persons whose signatures are forcibly taken on the concerned documents approached the complainant and the complainant and these persons decided to promote one Mandal by name Shri Siddhi Vinayak Juna Ashram Seva Sangh. Once again in January, 2006, according to the complainant, the persons named by him in the statement were roaming in the area and were threatening the residents so also forcing the people to become the members of the housing society. The residents were fed up and all of them decided to form an independent housing society. Accordingly the above Sangh was formed and registered. After stating that there are about 425 houses/tenements in the area in the area of Mulgaon Juna Ashram, Andheri (East), the complainant alleged that about 324 persons have become the members of Shri Siddhi Vinayak Juna Ashram Housing Society (Proposed). The complainant/first informant is the Chief

Promoter of the same. It is his allegation that Vishnu Nepali, Madhu Musale etc. were agitated and annoyed because their society (Jai Ambe Housing Society) has only two members and, therefore, they once again started threatening the residents and taking their signatures on the agreement forcibly.

15. It is in this background he states that on 9th April, 2006 when he was at Palghar, on his mobile number a phone call came and number was displayed. The person speaking from other side was Ravi Pujari. The complainant/first informant alleges that Ravi Pujari enquired from the first informant about his committee/society but the first informant avoided answering his querries. Thereafter, it is alleged that the person speaking from other side, Ravi Pujari spoke in the threatening voice and told the first informant that you should remove yourself from the committee otherwise you will have to face dire consequences. The first informant should hand over the entire affairs to Bhau Nepali. The first informant allegedly said that he would think about it. However, the said Ravi Pujari spoke in a threatening and abusive language and told him that either the first

informant listens to Ravi Pujari or he will tell his shooters to finish him. Thereafter, he told him that the first informant should contact Vishnu and Bhau and settle the matter. In other words, Ravi Pujari being interested in developing the property, the first informant should remove himself and stay away from the same otherwise he will meet the same fate as that of his colleague. The phone was disconnected there. The first informant states that he knows Ravi Pujari and can recognise his voice.

16. Despite the threats meted out the first informant did not contact Vishnu Nepali or Bhau. It is alleged by him that Ravi Pujari went on making phone calls on his mobile. Thereafter even Vishnu Nepali contacted him on mobile. It is alleged that in April, 2006, Ravi Pujari called up on 8 to 9 occasions. He was threatening the first informant and telling him to give up the society affairs. Lateron he was contacted by Suresh Bhavangir and Kishor and they threatened him. He was threatened by the others such as Surendra Pasi and Ajay Sharma. These other persons told him that Ravi Pujari is interested in the property and development will

take place in partnership with Mahendra Agarwal.

17. It is thereafter alleged that in the second week of June, 2006 Madhu Musale contacted the first informant and called him to Madhu Musale's office. An offer was made that the property could be developed jointly. That is why the first informant went to the office of Madhu Musale. At that time Vishnu Nepali and Mahendra Agarwal were present. Madhu Musale told him in a threatening tone that the first informant should not interfere in their affairs. In any event, the first informant told Madhu Musale that there are more residents supporting him and in a meeting count can be made. If majority want to go with the first informant then appropriate decision be taken. Madhu Musale did not accept this offer and got agnry. He told him in a threatening tone that he should walk out of the project and whatever money he wants he will be paid that sum. However, if he does not walk out then Musale will tell "Bhai" and thereafter the first informant will have to face dire consequences. Similar threats were given by Mahindra Agarwal and Vishnu Nepali. Vishnu Nepali told the first informant that "Bhai" has stated that if he is not willing to give up the

society then Rs.10 crores will have to be paid to "Bhai" (Ravi Pujari) by the complainant/First Informant and only then development can start in respect of the said property.

18. The first informant states that on account of Ravi Pujari having fired at the office of Mahesh Bhat and also fired at Kalim at Andheri and that fact being known to the first informant from Radio and T.V. reports he was frightened and did not immediately lodge the complaint.

19. These are his allegations and he states that the persons named by him in his statement have threatened him and all these threats are at the instance of Ravi Pujari. There are other statements recorded and it is not necessary to make a detailed reference to them.

20. The learned Judge has gone by these statements and material and has observed that there has been no complaint of any of the residents of the locality about the alleged threats given to them as spoken by the first informant. This is an significant aspect of the matter. The learned Judge thereafter took note of the submissions of the accused that the first

informant and other persons at his behest obstructed the legitimate work which "Vertex" intended to carry out on the plot/site. After noticing these submissions and referring to the documents including the injunction order of the Court, the learned Judge has observed that the order of the civil Court dated 13th April, 2006 relied upon by the accused supports their plea that the dispute is raised belatedly and false allegations have been levelled against the accused. Even if Ravi Pujari prevented the first informant from making any complaint prior to 1st July, 2006, the fact that the parties were before the Court of law cannot be brushed aside. Despite the threats from Ravi Pujari and the fear of attack from him, the first informant did not do anything as directed by him nor reported the matter to police. The fear of Ravi Pujari does not seem to have prevented the first informant from doing what Ravi Pujari had told him not to do but how it prevented him from lodging the report to the police is not clear, is also, a prima facie observation.

21. It is in these circumstances that the learned Judge after going through the entire material has observed that the developers who

are interested in the project had raised some sort of dispute but that by itself is not enough even at this prima facie stage to hold that the accused are guilty of offence alleged. The Disputes over Rights in an Immovable Property are not enough but something more is required for the Accused to be connected with the crime is the prima facie finding.

22. In para 23 of the order passed by the learned Judge, the learned Judge has enumerated the factors that cannot be ignored even at the prima facie stage.

23. According to the learned Judge, inconsistent stand of the first informant and further factors narrated by him would go to show that assuming everything against the accused, yet, it cannot be said that they are prima facie guilty of offence punishable under MCOCA.

24. In paras 25 and 26 of his order the learned Judge has observed thus:

> "25. After going through the entire material collected during investigation, and also the case diaries, it is

observed that it is nobody's case that Ravi Pujari had threatened any of the residents or occupants to join a particular society only. The allegations are against the applicants to the effect that they have threatened some of the occupants/residents in the name of Ravi Pujari.

26. It may be observed that the remand applications proceed on the footing that it is Ravi Pujari who is interested in doing the redevelopment project; and that the applicants are the members of the 'organised crime syndicate' headed by him. The allegation against the applicants is that the threats that are alleged being given by them, are at the instance of the said Ravi Pujari. This stand is a little modified later to suggest that the applicants have taken the aid or Ravi Pujari to ensure the success of their redevelopment project."

25. It is in these circumstances, that the learned Judge concludes that the activities of the respondents cannot be said to be undertaken

by them as members of the organised crime syndicate or on behalf of the same.

26. For the accused to be guilty, prima facie, of abetting commission of organised crime the learned Judge holds that there is no material and even further investigations have not yielded anything. The accused were in custody since 5th July, 2006 but till date of the learned Judge's order the prosecution could not produce any material.

27. Even confession of the co-accused Suresh is referred by the learned Judge and the learned Judge has observed that if the confession is read as a whole, it is doubtful whether it can be termed as a 'confession' at all. The conduct of the first informant is also commented upon in the context of material produced and considering that he claims that he knows Ravi Pujari.

28. While it is true that the learned Judge should not have gone into all details and should have shown some restraint and not made sweeping observations and general remarks, in my view, that alone does not make the order passed by him in any way erroneous or vulnerable. Once the

finding is to be recorded on the touch stone of sec.21(4) of MCOCA then refeence to the material in some what details becomes necessary.

29. Having applied the relevant tests for cancellation of bail to the present application, in my view, the prima facie conclusions drawn by the learned Judge with regard to the materials produced do not warrant any interference either in my jurisdiction under sec.439(2) of the Code of Criminal Procedure or section 482 thereof.

30. It is not the contention of the prosecution that the learned Judge has not taken adequate care to ensure smooth progress of the investigation and attendance of the accused so also their availability during the course of trial. He has restrained them from leaving the limits of Brihan Mumbai till filing of the charge sheet. He also imposed usual conditions.

31. In my view, the conclusions drawn by the learned Judge at the prima facie stage with regard to applicability of the relevant provisions of MCOC must be seen as having made to satisfy whether respondent nos. 1 to 6 are

prima facie guilty of the offences alleged. They are made while deciding the bail application. Needless to state that the observations made by the learned Judge are prima facie and would not influence the Court while trying the case. Equally all observations made by me at this stage are also tentative and made during the course of consideration of the application for cancellation of bail. For the purpose of satisfying myself as to whether the discretion exercised by the learned Special Judge is in any way arbitrary or so palpably unreasonable that I have made the observations. My concurrence with the prima facie conclusions drawn ought not be viewed as "expression of opinion" on merits of the case. The impugned order is also not vitiated by non application of mind nor does it ignore vital material. For all these reasons I do not find that this is a fit case for cancellation of bail. Application is, therefore, dismissed.

(S.C.DHARMADHIKARI J.)